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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/528,488 | 03/17/2000 | Najla Guthrie | 52953.8 | 3790 |

25295 7590 04/06/2004

USDA, ARS, OTT
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BELTSVILLE, MD 20705-5131

EXAMINER

OWENS JR, HOWARD V

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1623

DATE MAILED: 04/06/2004

15

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/528,488

Applicant(s)

GUTHRIE ET AL.

Examiner

Howard V Owens

Art Unit

1623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14, 17 and 23-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 14, 17 and 23-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

Response to Appeal Brief

The following is in response to the appeal brief filed 10/23/03:

Withdrawal of Finality

Pursuant to an appeals conference, the finality of the rejection of the last Office action is withdrawn and an action on the merits of claims 14, 17 and 23-28 is contained herein below.

35 U.S.C. 112(2)

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 14,23,24 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: the environment in which the apolipoprotein B is reduced. The claims are drawn to reducing apolipoprotein B, but there is no recitation as to whether the reduction occurs in vivo (i.e human, mammal) or in vitro, as such the method claim is incomplete.

35 U.S.C. 102(b)

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 17, 25, 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Tatum et al., Phytochemistry, Vol. 11, pp. 2283-88, 1972.

Claim 17 is drawn to a composition containing limocitrin-3,7,4'-trimethylether or limocitrin 3,5,7,4' tetramethylether.

Claims 25, 27 and 28 are drawn to a composition containing 5-desmethylinensetin. The intended use of the composition does not bear patentable weight as such, Tatum anticipates the claims as it teaches 5-desmethylinensetin in a composition, p. 2288 (compound XVIII) as well as limocitrin-3,7,4'-trimethylether compound I and limocitrin 3,5,7,4' tetramethylether (both the trimethylether and tetramethylether of limocitrin are present in oranges, which constitutes a composition).

Howard V. Owens

Patent Examiner

Art Unit 1623

A handwritten signature in black ink, appearing to read "James O. Wilson", written over a horizontal line.

James O. Wilson
Supervisory Patent Examiner
Technology Center 1600

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Howard Owens whose telephone number is (571) 272-0658. The examiner can normally be reached on Mon.-Fri. from 8:30 a.m. to 5 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the Supervisory Patent Examiner signing this action, James O. Wilson can be reached on (571) 272 - 0661.